



BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

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REGULATORY AUTH.

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June 5, 2002

Guy M. Hicks
General Counsel

615 214 6301
Fax 615 214 7406

OFFICE OF THE
EXECUTIVE SECRETARY

VIA HAND DELIVERY

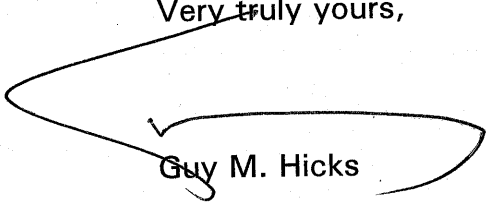
David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Docket to Establish Generic Performance Measurements, Benchmarks
and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*
Docket No. 01-00193

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Response to the CLEC Coalition Motion for Clarification/Reconsideration. Copies of the enclosed are being provided to counsel of record.

Very truly yours,


Guy M. Hicks

GMH:ch

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In Re: ***Docket to Establish Generic Performance Measures, Benchmarks, and Enforcement Mechanisms for BellSouth Telecommunications, Inc.***

Docket No. 01-00193

**RESPONSE OF BELL SOUTH TELECOMMUNICATIONS, INC. TO
CLEC COALITION MOTION FOR CLARIFICATION/RECONSIDERATION**

BellSouth Telecommunications, Inc., ("BellSouth") hereby files its Response to the CLEC Coalition Motion for Clarification/Reconsideration, and states the following:

On May 29, 2002, a number of CLECs (who refer to themselves collectively as the "CLEC Coalition") filed a Motion that purports to seek clarification of the Authority's ruling that the cost of the annual, independent third party audit shall be borne equally by BellSouth and the CLECs. Specifically, the language at issue is the requirement of the Order that "BellSouth shall pay fifty percent (50%) of the cost of the audit and the remaining cost shall be divided equally among the other parties to this action." (Order, p. 33). The CLEC Coalition requests that the Authority "clarify" this ruling to state that BellSouth shall pay one hundred percent of the cost of the subject audit, and that the CLECs shall have no financial obligation whatsoever. One can only guess as to why the Coalition chose to categorize this as a request for "clarification," but it is obvious that clarification is not what they seek. Instead, the Coalition is requesting that the clear and unambiguous ruling of the Authority be changed to relieve the CLECs of all financial

responsibility for the audit, a position that they advocated during the hearing, and that the Authority has rejected. Moreover, the CLEC Coalition has provided no basis, either legal or otherwise, to support its request.

The CLEC Coalition does not cite to any claimed error of law or fact by the Authority. Instead, it contends only that it would be "more appropriate" to require BellSouth to bear the full financial burden of audits, and to place no burden on the CLECs whatsoever. (CLEC Motion, p. 2). In support of this contention, the Coalition offers the primary argument that the Authority should rule as requested because other Commissions have done so. In this regard, the CLEC Coalition cites to a number of State Commissions around the country in support of the contention that ILECs have routinely been required to bear the full burden of audits. In BellSouth's region, the CLECs cite specifically to the recent decisions of the Commissions of North Carolina and Florida. The CLECs, however, simply ignore the fact that the majority of Commissions in BellSouth's region have done precisely what the Authority has done, i.e., required that CLECs pay fifty percent of the cost of the annual audit. Specifically, this result was ordered by the State Commissions in Georgia, Alabama, South Carolina, Mississippi and Kentucky.¹

Contrary to the apparent assertion of the CLECs, BellSouth believes that there is more to resolving this issue than simply taking a tally of how other Commissions have ruled and then following their lead. Even if the Authority were

¹ See, Georgia: Docket 7892-U, Order dated May 7, 2001; Kentucky: Case No. 2001-15, Order dated October 19, 2001; Louisiana: Docket No. 97-AD-321, Order dated May 14, 2001; Alabama: Docket 25835, Notice of Decision, dated May 30, 2002; South Carolina: Docket No. 2001-208-C, Order No. 2002-77, dated February 14, 2002.

inclined to adopt this approach, however, the impression that the CLECs have attempted to create, that most Commissions (and specifically, most Commissions in BellSouth's region) have ruled differently than the Authority did on this point, is simply false. Again, of the nine Commissions in BellSouth's region, six (including the Authority) have determined that it is appropriate to divide the financial responsibility for audits between BellSouth and the CLECs.

Beyond this, the CLEC Coalition makes little more than a cursory attempt to state a substantive basis for its contention that CLECs should not be required to make any financial contribution to the cost of the audit. The CLECs' claim that, if the CLECs are collectively required to pay fifty percent of the audit cost in some fashion, it will be difficult to determine who should pay what. This is simply wrong. In the above-quoted language from the Order, the Authority stated that fifty percent of the audit cost should be divided equally among the parties to the action. The Order identifies fourteen parties (other than BellSouth) that were granted leave to intervene at the time of the pre-hearing conference (Order, page 2). Determining how much each should pay involves nothing more than dividing 50% by 14, which means each party other than BellSouth would be obligated to pay approximately 3.5 percent of the total cost of the audit.

The CLECs also contend that audits are necessary to "ensure that BellSouth is meeting its legal obligations." A more accurate assessment of the situation is that audits are necessary to satisfy the demands of the CLECs for both independent verification of BellSouth's performance and for a means to address

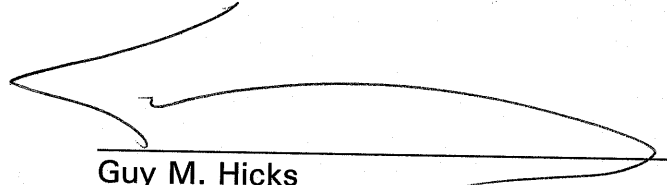
problems that may arise. Throughout this proceeding, CLECs have argued vigorously for audits, and there is no question but that CLECs will derive a benefit from the annual audit. It is ridiculous for the CLECs to demand a process that benefits them, but to refuse to pay anything (even 3.5% of the audit cost) for these benefits.

Finally, the CLECs argue that they should not be required to sustain any financial obligation to pay for the audit because of their "tight financial situation." (CLEC Motion, p. 3). The CLECs provide nothing beyond this unsupported cry of poverty to support the implication that all CLECs are financially incapable of paying even the relatively minor audit costs that the Authority has assigned to them. If this were an issue, however, there is certainly a way to deal with it. In the testimony of BellSouth witness, David A. Coon, he proposed that fifty percent of the audit costs should be divided among the CLECs that actually participate in the annual audit. (Coon Rebuttal Testimony, pp. 109-110). Although BellSouth believes that the approach that the Authority has ordered is appropriate, if the Authority were concerned about the ability of any given CLEC to pay the cost of an audit, then the BellSouth proposal would address this concern. Under this proposal, a CLEC could avoid having even the small financial obligation provided in the Order by simply choosing not to participate in the audit. Again, BellSouth believes that the Authority's ruling on this point is appropriate, but offers this alternative only if the Authority accepts the unsupported contention that some CLECs may be unable to contribute to the cost of the annual audit.

WHEREFORE, for the reasons set forth above, BellSouth requests that the Authority deny the Motion of the CLEC Coalition for Clarification/Reconsideration.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A large, stylized handwritten signature in black ink, appearing to read 'Guy M. Hicks', is written over a horizontal line.

Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

R. Douglas Lackey
J. Phillip Carver
675 West Peachtree St., NE, Suite 4300
Atlanta, GA 30375-0001

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2002, a copy of the foregoing document was served on the following parties, via the method indicated:

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

James Lamoureux, Esquire
AT&T
1200 Peachtree St., NE
Atlanta, GA 30309

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Henry Walker, Esquire
Boult, Cummings, et al.
P. O. Box 198062
Nashville, TN 37219-8062

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Jon E. Hastings, Esquire
Boult, Cummings, et al.
P. O. Box 198062
Nashville, TN 37219-8062

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Charles B. Welch, Esquire
Farris, Mathews, et al.
618 Church St., #300
Nashville, TN 37219

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Dana Shaffer, Esquire
XO Communications, Inc.
105 Malloy Street
Nashville, TN 37201

